

Illinois Department of Transportation

Division of Highways / Bureau of Construction
2300 South Dirksen Parkway, Springfield, Illinois 62764

Subject:
Administration of Contract Time
for Working Day Contracts
Articles 108.03, 108.04 and 108.08

CONSTRUCTION MEMORANDUM NO. 02-28

Effective: May 31, 2002

Expires: Indefinite

This memorandum supersedes and replaces Construction Memorandums No. 97-28 Administration of Contract Time for Working Day Contracts - Article 108.03, 108.04 and 108.08.

One of the most important and sometimes difficult parts of contract administration is the control of Contractor progress. Once a contract is awarded, the public is very anxious to be able to use the facility. The number of working days permitted is specified in the contract and a schedule of liquidated damages has been established to promote the timely completion of contracts. This ensures that the public will not be unduly inconvenienced and may enjoy the benefits of the new facilities.

The entire matter of contract time administration requires exceptional judgment by all parties to the contract. The Contractor should take a good look at the contract time limit when considering submitting a bid on a contract. The Contractor must realize that it is his/her responsibility to the highway user, to the State, the construction industry and oneself to complete the work within the specified time limit. The Contractor should realize that there is no excuse for an extension of time except for conditions beyond his/her control.

In establishing the contract time limit, the State will consider all factors, and the Contractor should recognize that the time allowed is part of the contract. If the Contractor thinks the time allowed is insufficient, the Contractor should not bid on the contract. It is clearly stated in the specifications that the Contractor's plea that insufficient time was specified is not a valid reason for an extension of time.

The charging of working days must promote Contractor progress but must also take into consideration those conditions beyond the Contractor's control which impede or halt progress. The consistent consideration of these conditions is essential for the equitable treatment of all Contractors and the Department's standing with the construction industry. The following explains the Department's policy and interpretation of Article 108.04 as to the proper charging of working days.

A working day is defined as any calendar day between May 1 and November 30 inclusive; except Saturdays, Sundays and holidays observed by the Contractor's entire work force in Illinois; when conditions are such that the Contractor could be expected to do a full days work on the controlling item.

Start of Working Day Charges - The charging of working days starts when the Contractor begins actual construction work, but no later than ten (10) days after

execution and approval of the contract, unless otherwise provided in the contract or directed by the Engineer. The execution of the contract is the date on which the Secretary of Transportation signs the contract and bond. Under no circumstances can work begin prior to execution of the contract. If the question arises as to the status of contract execution, the Project Management Unit of the Central Bureau of Design and Environment should be contacted. There are some instances when it would not be in the public interest to start work within ten (10) days of contract execution and the starting date is delayed. The District Engineer may grant a delay in starting work. Such delayed starting dates must be documented in the contract files and a specific calendar date established as the new starting time. If necessary, this date may later be modified in writing. However, no open-ended delayed starting dates will be approved. Notice of the delayed start must be distributed to the Central Bureau of Construction, the Contractor and other local agencies, if appropriate. The [Federal Highway Administration](#) should be notified on Interstate contracts only. The formalized statement granting the delay may be contained in the Preconstruction Conference Minutes with an explanation of the reasons for the delay.

Holidays - Holidays exempted as working days are not those observed by federal, state and local governments but those observed by the Contractor's entire work force. This is best determined by the presence of workers and the rate of pay they are receiving.

- If no forces are working, a working day should not be charged.
- If all forces are receiving premium time pay, a working day should not be charged.
- If some of the forces working on the controlling item are receiving straight time pay, a working day should be charged.

Partial Day Charges - The length of a working day in hours will be determined by the Contractor's established practice but may not be less than eight hours. Partial day charges shall be based on the proportionate part of the established working day, if applicable, rather than the normal eight-hour work day. For example, a Contractor has established a practice of working 12 hours a day on a particular controlling item. If conditions are such that the Contractor can only work six hours on that item, then only one-half, rather than three - quarters, of a working day shall be charged.

Availability of Equipment - The Contractor is responsible for furnishing sufficient equipment and labor to prosecute the work in accordance with the approved progress schedule. If needed equipment is not available, a working day normally should be charged but there are exceptions.

The Contractor may start work the day after the preconstruction conference on the controlling item of earth excavation but it may take several days to deliver and assemble an "equipment spread" at the jobsite. If the approved progress schedule has earth excavation as the controlling item of work and shows a production rate of 1,500 cubic meters (2,000 cubic yards) per day and the Contractor is only able to accomplish 750 cubic meters (1,000 cubic yards) per day during the initial start up, then only one-half working day should be charged.

If the Contractor experiences a breakdown of a major item of equipment, such as a bituminous or P.C.C. plant or paver, and field repairs cannot be made, a review of working day charges may be considered. A full or partial working day should be charged on the day of the breakdown based on the production attained. Working days should not be charged during the subsequent breakdown period provided the Contractor is making a good faith effort to repair or replace the broken equipment. If the Contractor experiences intermittent equipment failures and continues work, but the permanency or time required for field repairs does not permit the approved production rate to be realized, then a partial working day should be charged based on the production attained.

The breakdown of minor equipment such as a truck, roller or scraper would not qualify as an exemption of a working day charge since these items are considered to be part of the Contractor's fleet and many of these items are readily available on a rental basis.

If added work that results from differing site conditions becomes controlling and the work requires different items of equipment than currently on the jobsite, the Contractor shall be given a reasonable period of time to acquire or deliver the equipment without being charged a working day.

Availability of Material - The Contractor is responsible for furnishing material and the unavailability of material does not justify an exemption of a working day charge unless it is beyond the control of the Contractor. Examples that are beyond the control of the Contractor would be area wide shortages due to reduced production or strikes, material furnished under a separate contract such as fabricated structural steel, design change or delays exceeding the times frames allowed for under Article 105.04 in approving shop drawings or material which was approved at the plant but was damaged in transit and is of a unique nature requiring considerable time for replacement.

Strikes - Working days shall not be charged during a labor strike, which is beyond the Contractor's control. The Contractor may not be able to resume work immediately after the strike is settled. If the Contractor must remobilize personnel and equipment or replenish depleted stockpiles, a working day shall not be charged.

Threatening Weather Conditions - When there is a potential for adverse weather conditions which would prevent work on controlling items such as P.C.C. or bituminous pavement or bridge deck pours, the Contractor must make a decision very early whether to risk the cost which would be incurred in starting a plant and mobilizing a sizable work crew which might not be able to work. If forecasts are for possible adverse weather conditions and the Contractor elects not to work, a working day shall not be charged even though the adverse weather may not develop.

Subcontracted Work - The prime Contractor is held responsible for the diligent and proper prosecution of all work even though a portion of that work is sublet. The exemption of full or partial working day charges for valid reasons would apply to work being performed by a subcontractor as well as to that being performed by the prime Contractor. However, if work is not progressing because a subcontractor is not available due to work on another contract, a working day should be charged.

Calendar Date and Temperature Restrictions - The Standard Specifications prohibit the performance of some work beyond certain calendar dates. The Standard Specifications also require additional measures, approval or both after certain calendar dates or under certain temperature conditions. The charging of a working day is dependent upon the work and the circumstances. Careful reading of the Standard Specifications is required. The following are examples and should not be considered as all inclusive.

Thermoplastic pavement markings may not be placed when the temperature of the pavement is below 13°C (55°F) and no later than November 1 or earlier than April 15. Placement should not be permitted between November 1 and April 15 and a working day should not be charged regardless of the temperature.

If a P.C.C. pavement is to receive a protective surface treatment, membrane curing of all P.C.C. pavements is discontinued after November 1 regardless of the protective treatment application. If temperatures are such that P.C.C. pavement could be placed and the Contractor elects not to pave so as to avoid the expense of the polyethylene curing, a working day should be charged.

Concrete for structures shall not be placed outside when the temperature is below 7°C (45°F) and falling or below 4°C (40°F) without protection. If the Contractor elects not to pour so as to avoid the cost of protecting the concrete, a working day should be charged. Even with cold weather protection, weather conditions may be such that placement of concrete is impractical. Under these circumstances, a working day should not be charged.

Final Cleanup - The working days allotted include the time required for final cleanup or "punch list" work. Final cleanup should be included as an item on the progress schedule and working days should be charged during the period when final cleanup is controlling to promote prompt contract finalization. If the final inspection was delayed and the Contractor has demobilized his/her work force, a reasonable period of time may be granted before the charging of working days is resumed.

The proper charging of working days and the fair and prompt consideration of time extensions is one of the most important duties of the Engineer. Equally important is the review by the Contractor of the Resident's Weekly report and timely notification by the Contractor of objections to working day charges.

If working days are properly charged, there would be no need to review or revise the working day charges at the end of the contract. However, we must recognize that there are delays beyond the control of the Contractor and that in some situations pertinent information may not be available to the Resident at the time the charges were made.

As a result of considerable discussion involving all districts, we have arrived at a list of conditions under which working days may be reviewed and adjusted if new information warrants. In all cases, there must be support to show that a delay occurred and was caused by one of these conditions and that this delay was not taken into account in the original charging of working days by the Resident. It is not intended to grant duplicate relief for the same delay. If no charges were originally made, no further relief can be granted. Likewise, the same delay can only be considered under one of the following

circumstances. It is the responsibility of the Contractor to provide the documentation required to support a claim for additional time or relief of working day charges. Delays should be verified and documented in writing in a timely manner when they occur. As an example, if a material is delayed due to supplier strikes or government priority, advise the Contractor to obtain a letter to this effect immediately.

The following conditions and examples should be used in determining whether a review and adjustment of working days is warranted. The adjustment may be as a revision of days already charged or as working days added to the contract.

Increase in Final Cost of Contract - If after final quantities have been determined and the contract cost is increased from the awarded cost, additional working days may be requested for the Contractor in the ratio of final contract cost to the awarded contract cost.

$$\left[\frac{\text{Final Cost}}{\text{Awarded Cost}} \times \text{Awarded W.D.} \right] - \text{Approved W.D.} = \text{Extension in W.D.}$$

Delay Caused by Added Quantities and Changed Contract Requirements - If added quantities or changed contract requirements are identified as affecting overall progress, working days may be reviewed.

Common examples of added quantities would be earth excavation, embankment and field tile. The required adjustment to working days can be calculated by dividing the added quantity by either the progress schedule rate or actual production rate. This determination is made by the district. An example of changed contract requirements would be opening pavement to through traffic when the contract specified that the pavement would be closed to all but local traffic. The adjustment could be based on actual production rates versus the Contractor's progress schedule production rates.

Another example would be when earthwork has been completed but due to field conditions the Department determined that additional work was required to correct plan deficiencies. Actual production rates could vary considerably from those experienced on the initial contract work.

A similar case would occur when work was completed at an intersection but traffic flow did not function as intended and additional work was required to improve the traffic flow through the intersection.

Delay Caused by Utilities or Railroad Adjustment - If utilities or railroad adjustments delayed the Contractor, working days may be reviewed. An example would be where the Contractor was unable to complete the approaches to a railroad crossing during normal construction operations because the railroad failed to complete their crossing adjustment as per the railroad-state agreement. All work on the contract was nearly completed before the approach area was available. Additional working days may be granted to complete the approach work.

Another example would be where the Contractor's progress on storm sewer was affected by required utility adjustments not shown or addressed in the contract documents.

A similar case would be when full working days were charged while the Contractor was prevented from completing an earthwork related controlling item because utility lines had not been relocated as per the contract documents.

Delay Caused by Rejected Material Beyond Contractor's Control - If delays occur due to rejection of a specialized or experimental material and the reason for rejection was beyond the Contractor's control, working days may be reviewed. An example would be when a culvert pipe with prior inspection at the plant was rejected at the jobsite for having been damaged in transit. This may be a special order item and it may have taken the supplier three weeks to provide a replacement.


Delay Incurred in Obtaining Special Permits - If delays occur in obtaining special permits through no fault of the Contractor and progress on the controlling item is impeded, working days may be reviewed, provided the Contractor furnishes documentation showing that the application was submitted in a timely manner. An example would be where a ditch under the jurisdiction of a drainage district crossed State right-of-way and a permit for a temporary crossing was needed in order for the Contractor to haul material to the jobsite and the permit was applied for in a timely manner but approval was not granted in a timely manner.

Delays Resulting from Compliance Under Article 107.21 - If progress on the controlling item is delayed because of the requirement to protect and preserve aboriginal records or antiquities, working days may be reviewed. An example might be a case where an archaeological site was found and resulted in the delay or impediment of progress on the controlling item.

Delay Due to Redesign or Obtaining Right-of-way - If a change in design or delay in obtaining right-of-way delays or impedes progress on the controlling item, working days may be reviewed. An example would be where the Contractor had to revise the progress schedule due to design revisions for intersections, grade changes, bridge substructures, bridge superstructures, or traffic signals.

Another example is where the all right-of-way shown on the plans has not been acquired and prosecution of work on the controlling item is impeded.

In all cases where there is a dispute as to the total number of working days charged on a contract, the working day charges should be carefully reviewed in accordance with the guidelines outlined in this memorandum.



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